

1 Courtney L. Baird (SBN 234410)
clbaird@duanemorris.com
2 **DUANE MORRIS LLP**
750 B Street, Suite 2900
3 San Diego, CA 92101
Telephone: +1 619.744.2200
4 Facsimile: +1 619.744.2201

5 Lawrence H. Pockers (admitted *pro hac vice*)
lhpockers@duanemorris.com
6 Thomas T. Loder (admitted *pro hac vice*)
ttloder@duanemorris.com
7 **DUANE MORRIS LLP**
30 South 17th Street
8 Philadelphia, PA 19103
Telephone: +1 215.979.1000
9 Facsimile: +1 215.979.1020

10 Attorneys for Defendants
PAUL SCHEMBARI; ACP JET CHARTERS,
11 INC.; PHENIX JET INTERNATIONAL,
LLC; and COSA DI FAMIGLIA HOLDINGS,
12 LLC

13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 WESTERN AIR CHARTER, INC., doing
business as JET EDGE
17 INTERNATIONAL, a California
corporation,

18 Plaintiff,

19 v.

20 PAUL SCHEMBARI, an individual *et al.*,
21 Defendants.
22

Case No. 2:17-cv-00420-JGB (KSx)

**EX PARTE APPLICATION TO
PERMIT THE FILING OF A
RESPONSE TO PLAINTIFF'S
OBJECTION TO THE REBUTTAL
DECLARATION OF ELIZABETH
DILLARD**

[Proposed Order and Declaration of
Romtin Parvaresh filed concurrently
herewith]

Judge: Hon. Jesus G. Bernal
Courtroom: 1
3470 Twelfth Street
Riverside, CA

**TO THE HONORABLE COURT AND PLAINTIFF AND ITS COUNSEL
OF RECORD:**

PLEASE TAKE NOTICE that Defendants Paul Schembari, ACP Jet Charters, Inc., Phenix Jet International, LLC, and Cosa Di Famiglia Holdings, LLC (collectively, “Defendants”) hereby move ex parte requesting the Court to permit them to file a response to Plaintiff Western Air Charter, Inc. d/b/a Jet Edge International’s (“Plaintiff”) Objection to the Rebuttal Declaration of Elizabeth Dillard Filed With Defendants’ Reply Brief (“Objection”). (Dkt. No. 320.) Defendants’ proposed response is less than two pages, and is attached to the concurrently filed Proposed Order and Declaration of Romtin Parvaresh.

Defendants’ Renewed Motion for Judgment as a Matter of Law (Fed. R. Civ. P. 50(b)) is set for hearing on June 17, 2019. On May 30, 2019, Defendants filed a reply in support of their motion. (See Dkt. No. 319.) As permitted by Local Rule 7-10, the reply was accompanied by a rebuttal declaration of Elizabeth Dillard, the CFO for ACP Jet Charters, Inc. (Dkt. No. 319-1.) On June 6, 2019, Plaintiff filed its Objection without prior written order, in violation of Local Rule 7-10. (See Dkt. No. 320.) The Objection generally argues the merits of Dillard’s declaration and why it “do[es] not help Defendants’ cause.” (Dkt. No. 320, p. 2, ll. 13–15.)

This application is made on grounds that the interests of justice require that Defendants be allowed to file a response to Plaintiff’s Objection. Denying Defendants this opportunity would reward Plaintiff’s violation of Local Rule 7-10. If allowed to respond, Defendants will explain why Dillard’s declaration is permissible rebuttable evidence.

Pursuant to Local Rule 7-19.1, counsel for Defendants advised counsel for Plaintiff of this ex parte application on June 6, 2019. (See Declaration of Romtin Parvaresh filed concurrently herewith.) Counsel for Plaintiff has not indicated a position on the application.

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June 7, 2019

By: /s/ Lawrence H. Pockers
Courtney L. Baird
Lawrence H. Pockers (admitted *pro hac vice*)
Thomas T. Loder (admitted *pro hac vice*)

Attorneys for Defendants
PAUL SCHEMBARI; ACP JET
CHARTERS, INC.; PHENIX JET
INTERNATIONAL, LLC; and COSA DI
FAMIGLIA HOLDINGS, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants seek permission to file a response to Plaintiff's Objection to the Rebuttal Declaration of Elizabeth Dillard ("Objection"), which was filed without prior written order in violation of Local Rule 7-10. Defendants' proposed response is less than two pages and explains why Dillard's declaration is permissible rebuttable evidence. The response is attached to the concurrently filed Proposed Order and Declaration of Romtin Parvaresh.

II. LOCAL RULE 7-10 ALLOWS REBUTTAL EVIDENCE ON REPLY AND PROHIBITS A RESPONSE ABSENT PRIOR COURT ORDER

Local Rule 7-10 governs the filing of reply papers in law and motion practice. It provides that not later than 14 days before a hearing, a moving party may "file a reply memorandum, and declarations or other rebuttal evidence." C.D. Cal. L.R. 7-10. It also states that "[a]bsent prior written order of the Court, the opposing party shall not file a response to the reply." *Id.* This second provision distinguishes the Central District from other California district courts which allow an opposing party to file an objection to evidence submitted in the reply without prior order. *See* N.D. Cal. L.R. 7-3(d)(1) ("If new evidence has been submitted in the reply, the opposing party may file . . . an Objection to Reply Evidence . . . stating its objections to the new evidence, which may not include further argument on the motion.").

III. PLAINTIFF FILED ITS "OBJECTION" WITHOUT PRIOR COURT ORDER

Defendants' Renewed Motion for Judgment as a Matter of Law (Fed. R. Civ. P. 50(b)) is set for hearing on June 17, 2019. On May 30, 2019, Defendants filed a reply in support of their motion. (*See* Dkt. No. 319.) As permitted by Local Rule 7-10, the reply was accompanied by a rebuttal declaration of Elizabeth Dillard, the CFO for ACP Jet Charters, Inc. (Dkt. No. 319-1.)

On June 6, 2019, Plaintiff filed its Objection without prior written order, in violation of Local Rule 7-10. (*See* Dkt. No. 320.) Despite its title, the "Objection"

1 reads as a sur-reply. Other than its introductory paragraph, it argues the merits of
 2 Dillard's declaration and why it "do[es] not help Defendants' cause." (Dkt. No. 320,
 3 p. 2, ll. 13–15.)

4 **IV. DEFENDANTS SHOULD BE ALLOWED TO RESPOND TO** 5 **PLAINTIFF'S "OBJECTION"**

6 The interests of justice require that Defendants be allowed to file a response to
 7 Plaintiff's Objection. Denying Defendants this opportunity would reward Plaintiff's
 8 violation of Local Rule 7-10. If allowed to respond, Defendants will explain why
 9 Dillard's declaration is permissible rebuttable evidence.

10 **V. CONCLUSION**

11 For the foregoing reasons, the Court should allow Defendants to file a response
 12 to Plaintiff's Objection to Dillard's declaration.

13 June 7, 2019

By: /s/ Lawrence H. Pockers

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